

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

MASTER SECURITY COMPANY, LLC¹

Employer

and

Case 5-RC-16416

UNITED GOVERNMENT SECURITY OFFICERS
OF AMERICA, INTERNATIONAL UNION (UGSOA)²

Petitioner

and

UNITED UNION OF SECURITY GUARDS (UUSG)³

Intervenor

DECISION AND ORDER

The Employer, Master Security Company, LLC, a Maryland limited liability company, provides security services to private and governmental entities, including the federal government. As part of its business, the Employer employs about 70 security guards at the offices of the U.S. Department of Housing and Urban Development (HUD) in Washington, D.C., the only location involved in this proceeding. The United Union of Security Guards (Intervenor) represents the Employer's guards at this facility. Petitioner, United Government Security Officers of America, International Union, filed a petition to represent the guards.

This case presents a single issue: whether the collective-bargaining agreement between the Employer and the Intervenor operates as a contract bar to the representation petition filed by the Petitioner.

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

³ The name of the Intervenor appears as amended at the hearing.

The Employer, Petitioner, and Intervenor all appeared at a hearing before an officer of the Board, and all three parties filed post-hearing briefs with me. I have carefully considered the evidence and arguments presented by the parties at the hearing and in their post-hearing filings. As discussed below, I conclude that the petition should be dismissed because it is barred by the current contract between the Employer and the Intervenor.

1. STATEMENT OF FACTS

Sometime prior to October 2009, the Employer won a contract to provide guard services to HUD, replacing the predecessor contractor, DTM. DTM and the Intervenor had been parties to a collective-bargaining agreement which covered, among other things, hours of work, seniority, holidays, pay and benefits, union security and check-off, discipline procedures, and grievances and arbitration. The agreement between DTM and the Intervenor was effective from July 12, 2007 through April 30, 2010, but terminated when DTM lost its HUD contract.

After assuming the contract to provide guard services at HUD, the Employer offered jobs to DTM's guard employees. The Employer, subsequently, recognized the Intervenor as the bargaining representative for its guard employees at HUD, and they met to negotiate a collective-bargaining agreement.⁴

On September 30, 2009, the Employer and the Intervenor signed a "bridge agreement." The bridge agreement adopted all the terms and conditions of employment set forth in the predecessor agreement between DTM and the Intervenor, with some modifications. Those

⁴ The parties stipulated, and I find, that the appropriate unit is as follows:

Included: All full-time and regular part-time security officers employed by the Employer at the U.S. Department of Housing and Urban Development (HUD) facility currently located at 451 7th Street SW in Washington, D.C.

Excluded: All sergeants, lieutenants, captains, office clerical employees, professional employees, managerial employees, and supervisors as defined by the Act.

modifications included raising the hourly wage of armed officers from \$20.40 to \$22.00 and setting forth the amount of monthly union dues to be deducted from guards' pay. The duration clause of the bridge agreement provided that it "shall be in force from 12/1/2009 to 9/30/2010; or until which time a new Collective Bargaining Agreement is reached, whichever comes first."

On February 17, 2010, the Petitioner filed a petition to represent the guards employed at the HUD facility.

2. POSITIONS OF THE PARTIES

The Petitioner contends that the bridge agreement does not serve as a contract bar to its representation petition. In support of its position, the Petitioner first argues that the bridge agreement is, by its own terms, of indefinite duration. According to the Petitioner, the period during which rival petitions may be filed (60 to 90 days from the end of the contract, under Board precedent) cannot be determined with any certainty because there is no definitive end date to the contract. The Petitioner argues in the alternative that the bridge agreement cannot bar its petition because it was either a "stopgap" agreement or a premature extension of the Intervenor's predecessor contract with DTM.

The Intervenor and Employer argue that the applicable window period for rival petitions can be calculated because the contract's termination date – September 30, 2010 – is stated in the contract. They contend that the "whichever comes first" phrase is standard contract language and merely refers to any modifications or extensions that may be properly reached during the 60-day insulated period at the end of a contract. The Employer and Intervenor further argue that the bridge agreement is a contract in its own right and not an extension of the predecessor agreement. They point out that the predecessor agreement expired when DTM lost its contract to provide guard services at HUD, and that while the bridge agreement adopts most of the terms

and conditions in that contract, it is a valid contract between two different parties covering substantial terms and conditions of employment for the guards.

3. ANALYSIS AND CONCLUSIONS

The sole issue raised in this proceeding is whether the bridge agreement serves to bar the Petitioner's representation petition. For the reasons that follow, and after careful consideration of the totality of the record evidence and the legal positions set forth in the transcript and in the parties' post-hearing briefs, I find that the Intervenor and the Employer have established that a contract exists barring further processing of the Petitioner's petition in this matter.

Under the Board's contract bar doctrine, a collective-bargaining agreement may bar a rival petition (a petition for an election by a rival union, a decertification petition by employees, or a management petition) for the length of the agreement, up to a limit of three years. *General Cable Corp.*, 139 NLRB 1123, 1125 (1962). A collective-bargaining agreement may be extended, but only during a very specific window: not more than 60 days prior to the end of the contract. If the contract is extended prematurely – more than 60 days before the contract ends – it will not bar a rival petition. *Direct Press Modern Litho, Inc.*, 328 NLRB 860, 861 (1999); *Pacific Coast Ass'n of Pulp & Paper Mfgs.*, 121 NLRB 990, 993 (1958). Any rival petition must be filed during another window: 60 to 90 days prior to the end of the contract.⁵ *Leonard Wholesale Meats, Inc.*, 136 NLRB 1000, 1001 (1962); *Deluxe Metal Furniture Co.*, 121 NLRB 995, 1001-02 (1958). Thus, a contract will bar, or block, any rival petition filed outside this 60 to 90 day window.

Furthermore, a contract must contain substantial terms and conditions of employment, including an effective date and an expiration date, in order to bar rival petitions. The length of

⁵ In health care cases, the petition must be filed not more than 120 days or less than 90 days before expiration. *Trinity Lutheran Hospital*, 218 NLRB 199 (1975).

the contract term must be ascertainable on the face of the contract. *South Mtn. Healthcare & Rehab. Ctr.*, 344 NLRB 375 (2005); *Cind-R-Lite Co.*, 239 NLRB 1255, 1256 (1979). In addition, a contract of indefinite duration – one that does not specify when it will terminate or terminates on the occurrence of some event in the future which cannot be established – cannot serve as a bar. *W. Horace Williams Co.*, 130 NLRB 223, 224 (1961).

In this case, the bridge agreement does contain a fixed term, which is ascertainable on its face. The contract became effective on December 1, 2009.⁶ The contract is effective to September 30, 2010, “or until which time a new Collective Bargaining Agreement is reached, whichever comes first.” The Petitioner’s contention that the “whichever comes first” phrase sets the termination date at some indeterminate point in the future is incorrect. Under the Board’s precedent as discussed above, parties can extend a collective-bargaining agreement prior to the stated termination date, but only during the 60-day window prior to the agreement’s end. *Leonard Wholesale Meats*, 136 NLRB at 1001; *Deluxe Metal Furniture*, 121 NLRB at 1001-02. The Employer and Intervenor, then, could lawfully extend the bridge agreement 60 days prior to September 30, 2010, and that extended contract would serve to bar any rival petition. Thus, under Board precedent, the bridge agreement could be extended as early as August 1, 2010.⁷

Here, however, there is no evidence that the Intervenor and Employer actually extended the bridge agreement; according to the uncontested testimony of Kristine Utz-Nichols, the Employer’s vice-president, they have not met to negotiate any changes or modifications to the agreement since it was signed. Nor does the bridge agreement, itself, constitute a premature extension of the prior agreement between DTM and the Intervenor. That agreement expired by

⁶ Although the Employer’s witness testified that the contract became effective on October 1, 2009, the language of the contract itself is clear. The Board will not resort to parol evidence to determine the contract term. *South Mtn. Healthcare & Rehab. Ctr.*, 344 NLRB 375 (2005).

⁷ In the event that the Employer and Intervenor did extend the contract prior to this date, I would look to the Board’s premature extension doctrine in deciding whether that contract barred a rival petition.

its own terms when DTM lost its contract with HUD. Although the Intervenor and Employer adopted most of its terms, they could not extend the prior agreement because DTM, one of the parties to that agreement, no longer had the work. Moreover, DTM is not a party to the bridge agreement. See *Chrysler Corp.*, 153 NLRB 578, 579 (1965).

Finally, contrary to the Petitioner's claim, the bridge agreement – though unfortunately named – is not a temporary agreement. A temporary or stopgap agreement will not bar a rival petition because it is “merely ... provisional in character” and “the parties contemplate superseding [it] with a permanent agreement.” *Bridgeport Brass Co.*, 110 NLRB 997, 998 (1954). Here, the Intervenor's collective-bargaining agreement with DTM expired when DTM lost its contract to provide guard services at HUD. The bridge agreement adopted all the terms and conditions of the prior agreement, with some modifications, and set out the effective date of the new agreement. Nothing in the contract indicates that it is, merely, temporary or provisional.

The bridge agreement between the Intervenor and the Employer is a contract with a definitive end date of September 30, 2010. A timely petition by a rival union could be filed as early as July 2, 2010 and as late as July 31, 2010. Because the Petitioner filed its petition on February 17, 2010, almost five months earlier than the applicable window period, I find that the petition is barred.

ORDER

The petition is dismissed.

RIGHT TO REQUEST REVIEW

Right to Request Review: Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of

this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **April 1, 2010**, at 5:00 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁸ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, select the E-Gov tab and then click on E-filing link on the pull down menu. Click on the "File Documents" button under Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure

⁸ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

(SEAL)

/s/ Wayne R. Gold

Dated: March 18, 2010

Wayne R. Gold, Regional Director
National Labor Relations Board, Region 5
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Baltimore, MD 21202